discretion in favor of taking jurisdiction. Since it is held in England that in case of two such separate wills the foreign will is not entitled to English probate,[18] admission to probate at the *situs* of the property was not only the most convenient solution but also violated no principles of comity.

JURISDICTION OF EQUITY TO RESTRAIN CRIMINAL PROCEEDINGS. — In early times when the common-law courts, because of the corruption and lawlessness of the period, were unable to give adequate relief, equity took jurisdiction of many criminal matters.[1] But this extended jurisdiction became obsolete as the need for it disappeared.[2] And in modern times, it has been broadly stated that equity has no power to enjoin criminal proceedings, nor to restrain the enforcement of statutes or ordinances.[3] It is, of course, true that equity cannot by its decree bind the criminal courts or the sovereign.[4] But it is no more impossible to restrain private prosecutors from initiating criminal proceedings than to prevent them from starting civil suits.[5] Nor does there seem to be any jurisdictional objection to the enjoining of public prosecutors who are acting under an invalid statute,[6] or an incorrect interpretation of a valid statute, or even a misapprehension of fact. Such an injunction is not aimed at the state itself.[7] The real question, then, in these cases is not whether equity can, but whether it should, restrain criminal prosecutions; that is, the question is one not of power but of policy.[8]

It may be conceded that as a general rule equity should not so interfere.[9] Furthermore, it is obvious that equity should not enjoin a criminal proceeding where it would not enjoin a civil suit. And many cases apparently denying altogether the jurisdiction of equity to interfere with criminal proceedings may be distinguished on this ground, since the facts raise no question of irreparable damage or of inadequacy of remedy at law.[10] Where, however, the plaintiff's legal remedy is clearly inadequate, equity can and should enjoin criminal proceedings, unless the objections of public policy appear too strong. The nature of the wrong sought to be redressed is material on this question of policy. Courts are, therefore, more ready to enjoin prosecutions *ex relatione*, or under municipal ordinances, than proceedings for other violations of the law.[11]

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[18] In the Goods of Coode, 1 Prob. & Div. 449; In the Goods of Murray, [1896] Prob. 65.

[1] 1 SPENCE, EQ. JUR. 341, 685.

[2] See *In re* Sawyer, 124 U. S. 200, 210.

[3] The Old Dominion Telegraph Co. *v.* Powers, 140 Ala. 220; Suess *v.* Noble, 31 Fed. 855. See Mayor of York *v.* Pilkington, 2 Atk. 302; Holderstaffe *v.* Saunders, 6 Mod. 16.

[4] Suess *v.* Noble, *supra*. See *Ex parte* Young, 209 U. S. 123, 163.

[5] Hendy *v.* Owen, Moore 820; Mayor of York *v.* Pilkington, *supra*.

[6] *Ex parte* Young, *supra*.

[7] *Ex parte* Young, *supra*. *Cf.* Fitts *v.* McGhee, 172 U. S. 516.

[8] See Hemsley *v.* Myers, 45 Fed. 283, 288; *Ex parte* Young, *supra*, 166. *Cf.* Lord Hardwicke's language in Lord Montague *v.* Dudman, 2 Ves. Sr. 396.

[9] See *In re* Sawyer, 124 U. S. 200, 210; 19 HARV. L. REV. 382.

[10] See, *e. g.*, Kerr *v.* Corporation of Preston, 6 Ch. D. 463; Minneapolis, etc. Co. *v.* McGillivray, 104 Fed. 258.

[11] See 17 HARV. L. REV. 567; Sylvester Coal Co. *v.* The City of St. Louis, 130 Mo. 323, 330.

The existing state of the authorities is quite confused. It is generally agreed that equity may act where a party to an equitable suit seeks to try the self-same issue in a subsequent criminal suit,[12] or tries to interfere by criminal prosecutions with an act ordered by the court.[13] But whether the fact that the criminal proceeding would involve irreparable injury to the plaintiff's property calls for equitable interference is not uniformly decided; though by the better view the jurisdiction is conceded.[14] And the authorities are in even greater conflict where the jurisdiction is sought to be based on the avoidance of multiplicity of suits at law; that is, by a bill of peace. Where there are many defendants at law, and all unite in raising the same issue of law as a defense, it would seem that equity should take jurisdiction.[15] An injunction under such circumstances was, however, refused in a recent case. *J. W. Kelly & Co.* v. *Conner*, 123 S. W. 622 (Tenn.). Similarly, where a single plaintiff seeks by the bill to avoid multiplicity of suits, all raising the same issue of law, the bill should be allowed.[16] Whether in the latter case the plaintiff need first establish his right at law is not altogether clear on the authorities. The majority of the cases do not enforce this requirement.[17] The minority view would, however, seem applicable where the bill is laid as a pure bill of peace, but there appears to be no multiplicity of suits pending. If the common question is one of fact, it may seem doubtful as a matter of policy whether the bill should be allowed, because of the resulting invasion of the province of the jury in criminal trials.[18]

JURISDICTION OF EQUITY TO ENJOIN THE PASSAGE OF A MUNICIPAL ORDINANCE. — The considerations which lead equity to enjoin the enforcement of municipal ordinances are referred to in the preceding note. Certainly if the enforcement of a particular ordinance could not be restrained, an injunction will not lie against its passage. But the converse of this proposition is not necessarily true. Municipal assemblies have a power of legislation, delegated to them by the legislature, in the exercise of which they should be as immune from judicial interference as is the legislature itself.[1] And as a court may not interfere with the legislature while delib-

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[12] Mayor of York *v.* Pilkington, 2 Atk. 302. *Cf.* Hedley *v.* Bates, 13 Ch. D. 498. See Harkrader *v.* Wadley, 172 U. S. 148.

[13] Turner *v.* Turner, 15 Jur. 218.

[14] Dobbins *v.* City of Los Angeles, 195 U. S. 223; Ryan *v.* Jacob, 6 Wkly. L. Bul. (Oh.) 139; Shinkle *v.* City of Covington, 83 Ky. 420. See Grand Junction Waterworks Co. *v.* Hampton, etc., [1898] 2 Ch. 331. *Contra*, Suess *v.* Noble, 31 Fed. 855.

[15] City of Chicago *v.* Collins, 175 Ill. 445. *Cf.* Ewelme Hospital *v.* Andover, 1 Vern. 266. *Contra*, Wade *v.* Nunnely, 19 Tex. Civ. App. 256 (no bill unless irreparable damage); State *ex rel.* Kenamore *v.* Wood, 155 Mo. 425.

[16] Third Ave. R. R. Co. *v.* The Mayor, etc., 54 N. Y. 159; Block *v.* Crockett, 61 W. Va. 421. But see City of Galveston *v.* Mistrot, 47 Tex. Civ. App. 63 (no bill unless irreparable damage); Predigested Food Co. *v.* McNeal, 1 Oh. N. P. 266.

[17] Third Ave. R. R. Co. *v.* Mayor, etc., *supra*. See Sylvester Coal Co. *v.* St. Louis, 130 Mo. 323. *Contra*, West *v.* Mayor, 10 Paige (N. Y.) 539. See Lord Tenham *v.* Herbert, 2 Atk. 483.

[18] Arbuckle *v.* Blackburn, 113 Fed. 616; Predigested Food Co. *v.* McNeal, *supra*. See Davis *v.* American Society, etc., 75 N. Y. 362; Davis *v.* Fasig, 128 Ind. 271, 276. *Cf.* Tribette *v.* Illinois Central R. R. Co., 70 Miss. 182.

[1] New Orleans Waterworks Co. *v.* New Orleans, 164 U. S. 471.